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Repeal of 2009 Act 20— AB 289 **Testimony before the Assembly Committee on Judiciary and Ethics** **October 27, 2011**

Thank you, Mr. Chairman and Committee members for hearing this very important bill today.

Assembly Bill 289 is an important piece of legislation, and one that eliminates another layer of bureaucracy and legal ambiguity for small businesses in our state. 2009 Act 20 also increased workloads on Wisconsin's state government and an already over-extended court system.

Act 20 created a lengthy, complex, and unnecessary new set of procedures that put Wisconsin businesses at greater risk for frivolous lawsuits:

- Federal anti-discrimination laws already allow federal courts to impose punitive damages;
- State law already provided for and will continue to provide for reinstatement, payment of back pay and payment of costs and attorney fees;
- The procedures established by 2009 Act 20 create a whole new round of litigation, making the process even longer and more expensive;
- 2009 Act 20 also created a new layer of bureaucratic oversight, allowing DWD to file charges even when a potential plaintiff does not;
- The effect has added to the workloads of both the state government and local courts, while opening Wisconsin businesses up to greater potential liability and greater potential for frivolous lawsuits;
- Small businesses are the worst affected when faced with potentially high court costs.

Prior to enactment of 2009 Act 20, Wisconsin employees already had the ability to take their Wisconsin Fair Employment Act claims before the Department of Workforce Development, and as cross-filed claims under federal laws based on the same facts and alleged types of claims before federal agencies, and then in state or federal court under federal law.

The same potential punitive and compensatory damages are already available under, for example:

- The federal Title VII of the Civil Rights Act of 1964
- The federal Americans with Disabilities Act of 1990
- The federal Genetic Information Nondiscrimination Act of 2008
- The federal Employee Polygraph Protection Act of 1988

Repeal of this measure is supported by the people who will be at the front lines of turning the Wisconsin economy around. The only job government can create is another temporary government supported job. What the legislature CAN do, however, is create a better climate to attract new businesses and allow current ones to thrive.

Repealing 2009 Act 20 will have no effect on an employee's ability to be compensated and reinstated following a discrimination or similar complaint. It will reduce the risk for employers; give employers more confidence in their ability to hire and produce; and increase Wisconsin's reputation for business-friendliness around the nation and the world.



Wisconsin

**Statement Before the
Assembly Committee on Judiciary and Ethics**

By

**Bill G. Smith
State Director
National Federation of Independent Business
Wisconsin Chapter**

**Thursday, October 27, 2011
Assembly Bill 289**

Mr. Chairman, members of the Committee, thank you for the opportunity to make a brief statement on behalf of NFIB's nearly 12,000 member firms located throughout the state.

During the 2009-10 Session, legislation was enacted that allows for the recovery of compensatory and punitive damages for violation of the Wisconsin Fair Employment Act. These damages may be awarded in addition to back pay, attorney fees, and other expense amounts incurred during the proceedings.

Nearly 50% of the respondents to a small business liability study said they *fear* they will become defendants in a lawsuit. This *fear* of becoming involved in a lawsuit causes over 20 percent of small business owners to spend more time on liability issues and potential liability problems than such vital business activities as introducing new technologies, evaluating changes in employee wages and benefits, obtaining or repaying business loans, evaluating the competition, or looking for ways to cut costs.

These are the job creating and job sustaining activities small employers should be engaged in – and not needlessly and unproductively spending money on liability insurance and legal fees.

Assembly Bill 289 will remove the unnecessary and unreasonably harsh penalties found in the Fair Employment Act. It is an important proposal strongly supported by our state's small business community, and I respectfully urge members of the committee to support passage.

Thank you for your consideration.

